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America Already Led, Tested and Proved Many of the Solutions: One Day They Are Inevitable

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America Already Led, Tested and Proved Many of the Solutions: One Day They Are Inevitable

Philip Alpers *

Americans already possess the tools needed to curb gun violence, and you will prevail. If this assertion marks me as the only optimist in the room, I hope that in a few minutes' time, more of you might see the reasons why.

Gun control generates levels of fury and mutual intolerance of other peoples' views right up there with those common in immigration and abortion debates. It spotlights some of the deepest ideological schisms and fears of our time, and includes a focus on human rights. For decades, one side has claimed an almost-sacred minority right, the right to bear arms. Only recently have we seen a growing focus on a much older right—the majority right that all of us have to an uninterrupted life.

In a moment I'll sketch for you the extraordinary results of gun violence prevention efforts in Australia. But first, some history. We know how and why America chose to tread its own path regarding firearms. But the history of early white settlement wasn't the only cause of the country's global gun control exceptionalism. More than a century ago, European empires moved in exactly the opposite direction. Their cities were beset with street violence, and some of the criminals, anarchists and Bolsheviks had guns.

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Winston Churchill at the Siege of Sidney Street. *Illustrated London News*, 7 January 1911

In London, three policemen and a Latvian revolutionary died in the Sidney Street Siege of 1911. That's Home Secretary Winston Churchill wearing a top hat, having his picture taken at the scene of the shooting. British police, routinely unarmed even to this day, had to summon the Scots Guards to bring some guns to the gunfight. And so it was that in the first decades of last century, the great empires of Europe and Asia invoked public shootings as a reason for all to agree on three central pillars of

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civilian gun control:¹

- The Person: License all gun owners
- The Object: Register all firearms
- The ‘Right’: Defined in legislation as a conditional privilege

By making gun ownership conditional on reasonable need and good behaviour, the third of these pillars explains why no other country on Earth has a Second Amendment.² And because the great empires were just that, these European and Asian gun control laws were copied to about 150 colonies around the globe.³

Although it’s these colonial-era pillars of law which enable most governments to keep a handle on the misuse of firearms, an even more potent force has more recently changed the face of gun control. For many decades, injury by gunshot was seen almost exclusively as a ‘crime problem’. Most of the proposed solutions fell into the ‘bottom of the cliff’ variety—after-the-fact law enforcement and retribution. But to public health practitioners, the gun is to gun violence as the mosquito is to malaria. Bullets and firearms are the agents of harm, and both are amenable to standard injury prevention procedures. Instead of waiting until after the damage was done, advanced societies developed a range of well-proven harm prevention measures—just as they did for smallpox, tobacco-related disease, HIV/AIDS, and many others. If holistic, best-practice firearm injury prevention has been entrenched anywhere, it’s in Australia.

Twenty-two years ago Australia had a serious problem—and it wasn’t just from a single gun massacre. In ten years the country had seen eleven mass shootings in which 116 people died. Most of the victims were killed

1. See generally *Civilian Gun Registration*, GUNPOLICY.ORG, https://www.gunpolicy.org/firearms/compare/194/civilian_gun_registration/10,11,18,31,40,66,69,88,91,125,148,153,172,177,178,192,86,90,113,136,146,149,155,162,185,189,206,7,26,50 (last visited June 7, 2019) (collecting countries gun laws).

2. Amy Sherman, *Marco Rubio Says Second Amendment Is Unique in Speech to NRA*, POLITIFACT (Apr. 29, 2014), <http://www.politifact.com/florida/statements/2014/apr/29/marco-rubio/marco-rubio-says-second-amendment-unique-speech-nr/>; Zachary Elkins, Tom Ginsburg & James Melton, *U.S. Gun Rights Truly Are American Exceptionalism*, BLOOMBERG NEWS ENTERPRISE, (Mar. 7, 2013, 5:30 PM), <http://www.bloombergvew.com/articles/2013-03-07/u-s-gun-rights-truly-are-american-exceptionalism>.

3. See *Civilian Gun Registration*, *supra* note 1 (summarizing the legislation of various countries).

by a semi-automatic rifle shot by a licensed gun owner, firing legally held firearms. It still surprises some to hear that 91% of those killers had no history of violent crime, and 80% had no history of mental illness.⁴

Finally, on April 28, 1996, in the Broad Arrow Café at Port Arthur, Tasmania, a lone “pathetic social misfit”—those were the words the judge used at his sentencing—killed thirty-five innocent people.⁵ The first twenty-nine bullets from this young man’s AR-15 rifle ended the lives of twenty innocents in just ninety seconds.⁶ In Australia, the Port Arthur massacre was both the country’s tipping point and its awakening. National transformation of gun laws happened very quickly. Newly elected Prime Minister John Howard was the country’s most conservative leader in decades. Yet in his first major act of leadership—and by far his most popular—Howard took only twelve days to bring together the four major political parties to radically improve gun laws across all eight states and territories.⁷ John Howard’s mantra, then and ever since, was that Australia should never “go down the American path” with guns.

Australia targeted the most conspicuous agent of harm—semi-automatic long guns. For years, gun dealers had marketed these as ‘assault weapons’, and they’d become the weapon of choice for mass killers. Plus, the country was primed and ready. In those twelve days, and in the months that followed, years of work by the public health community, lawyers, and domestic violence, church, and women’s groups suddenly paid off.⁸ Every few hours we heard our old fact sheets and articles being cited by politicians and journalists all over the country. Plagiarism never felt so good.

Until then, the gun lobby in Australia had been a powerful force.

4. Philip Alpers, *Mass Gun Killings in Australia, 1971-2018*, GUNPOLICY.ORG, <http://www.gunpolicy.org/documents/5902-alpers-australia-mass-shootings-1971-2018> (last updated Apr 13, 2019).

5. C. J. Cox, *Comments on Passing Sentence: Tasmania Supreme Court - R v Martin Bryant*, GUNPOLICY.ORG, (Nov. 22, 1996), <https://www.gunpolicy.org/documents/6940-cox-c-j-australia-tas-supreme-court-r-v-martin-bryant>.

6. *Id.*

7. Philip Alpers, *Australian Gun Laws*, in *THE PALGRAVE HANDBOOK OF AUSTRALIAN AND NEW ZEALAND CRIMINOLOGY, CRIME AND JUSTICE* 787 (Antje Deckert & Rick Sarre eds., 2017).

8. Rebecca Peters, *Rational Firearm Regulation: Evidence-based Gun Laws in Australia*, in *REDUCING GUN VIOLENCE IN AMERICA: INFORMING POLICY WITH EVIDENCE AND ANALYSIS* 195 (Daniel W. Webster & Jon S. Vernick eds., 2013).

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During the Port Arthur debate they admitted taking money and advice from the National Rifle Association of America.⁹ They dominated advice to government, and they ran an energetic disinformation machine. Some gun owners also threatened violence. At one rural meeting, where John Howard defended his gun ban, an Australian prime minister was photographed wearing a bullet-proof vest for the first time.

But the shooters had been marginalised by a national hardening of attitudes to firearms and their owners. Urged on by opinion polls showing up to 90% support for gun control,¹⁰ the Federal Government kept its promise, and pushed through an agreement between Australia's nine jurisdictions to enforce restrictive, uniform gun laws across the country. The result was the National Firearms Agreement ("NFA") of 1996.¹¹

The main provisions were:

- To ban semi-automatic and other rapid-fire rifles and shotguns;
- To require a "genuine reason" to possess each firearm;
- To specifically exclude self-defence as a genuine reason;
- To ban private gun sales in order to compel registration, and;
- To link gun owner licences and the registration details of each firearm nationwide.

In the same months that each state and territory re-drafted dozens of acts and regulations to comply with the new national standard, they also teamed up to achieve the world's largest, and most successful reduction in the firearm stockpile of any nation. In the main federal gun buyback immediately after Port Arthur, three-quarters of a million newly prohibited semi-automatic rifles and shotguns were purchased by the Government from gun owners at market value and destroyed. Six years later, following a shooting at Monash University, the National Handgun Buyback did the

9. Ted Drane, *Sharpshooter: A Profile*, *The Australian* (May 1, 1996).

10. SIMON CHAPMAN, *OVER OUR DEAD BODIES: PORT AURTHUR AND AUSTRALIA'S FIGHT FOR GUN CONTROL* 105 (2013), available at https://ses.library.usyd.edu.au/bitstream/2123/8938/1/Over-our-dead-bodies_Chapman.pdf.

11. Australasian Police Ministers Council, *Special Firearms Meeting, Resolution* (1996), available at <http://www.austlii.edu.au/au/other/apmc/>.

same with 68,000 pistols and revolvers.

But what's often overlooked is that in the years after the Port Arthur massacre, tens of thousands of gun owners also voluntarily surrendered non-prohibited firearms without asking for compensation. As a result, at least another 210,000 guns were destroyed, for a total of more than a million destroyed firearms.¹² And that's a very conservative estimate. Although we can only guess the size of the national firearm stockpile before these buybacks, it seems likely that the proportion of private guns destroyed was nearly one-third of the country's civilian firearms. And the cost? A one-year Medicare levy of 0.2% collected about \$15 from each taxpayer.¹³ To add perspective, a similar effort in the United States would require the destruction of 90 million firearms.

So, in terms of public health and safety, what's been the result?

12. Philip Alpers & Amélie Rossetti, *Australian Firearm Amnesty, Buyback and Destruction Totals: Official tallies and media-reported numbers*, GUNPOLICY.ORG (May 3, 2016), <https://www.gunpolicy.org/documents/5337-australia-firearm-amnesty-buyback-and-destruction-totals>.

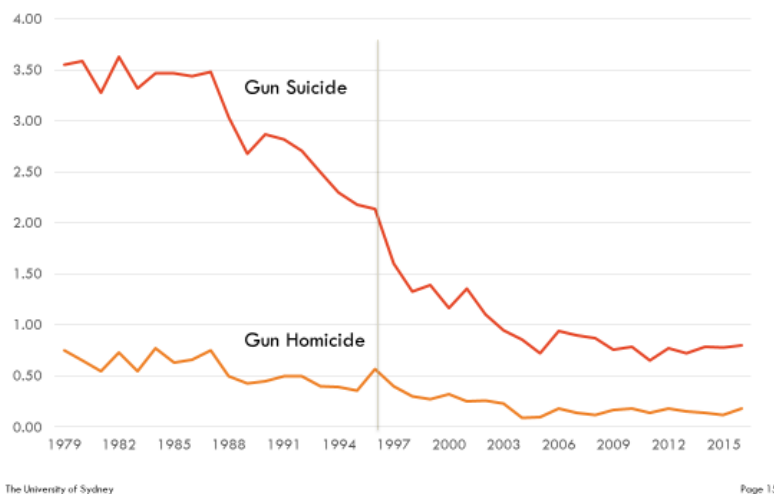
13. Phillip Alpers & Zareh Ghazarian, *From Policy Inertia to World Leader: Australia's "Perfect Storm" of Gun Control*, in *SUCCESSFUL PUBLIC POLICY: LESSONS FROM AUSTRALIA AND NEW ZEALAND* 205, 209 (Joannah Luetjens et al., eds. 2019) ("The cost of the buyback was distributed equitably across society by means of a one-off levy on federal income tax which cost the average taxpayer \$15.").

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Australia: Gun Suicide and Gun Homicide 1979-2016
Rate per 100,000 population



In the eighteen years before the National Firearm Buyback, from 1979 to 1996, gun suicide and gun homicide rates were already on their way down.¹⁴ This was a common pattern in wealthier nations. The main firearm buyback is indicated by the vertical line, after which the downward slope continued.

One study concluded that the rates per 100,000 population of gun homicide and gun suicide at least doubled their rates of decline.¹⁵ Researchers often stop short of claiming that Australia's public health intervention on its own caused the drop in gun deaths. But measured against the original targets, here's what followed. The first priority declared by government was to reduce the risk of mass shootings. The second, broader target was to reduce the much-more-common overall risk

14. Philip Alpers, *Australia: Gun Suicide and Gun Homicide, 1979-2016*, GUNPOLICY.ORG (Jan. 17, 2019).

15. Simon Chapman et al., *Australia's 1996 Gun Law Reforms: Faster Falls in Firearm Deaths, Firearm Suicides, and a Decade Without Mass Shootings*, 12 INJ. PREVENTION 365 (2006), available at <https://injuryprevention.bmj.com/content/injuryprev/12/6/365.full.pdf>.

of gun death and injury. Following the public health intervention, Australia went twenty-two years without another public mass shooting, the risk of dying by gunshot more than halved, and the country did not see an increase in homicide and suicide by methods other than firearms.¹⁶ According to the latest official figures, Australia's rate of gun homicide per 100,000 people is now twenty-five times lower than the rate in the United States.¹⁷

16. *Id.*

17. Philip Alpers, Amélie Rossetti, and Daniel Salinas, *Compare the United States Rate of Gun Homicide per 100,000 People*, GUNPOLICY.ORG (Jan. 17, 2019), https://www.gunpolicy.org/firearms/compare/194/rate_of_gun_homicide/10,280,66,69,87,91,125,128,177,178,31.

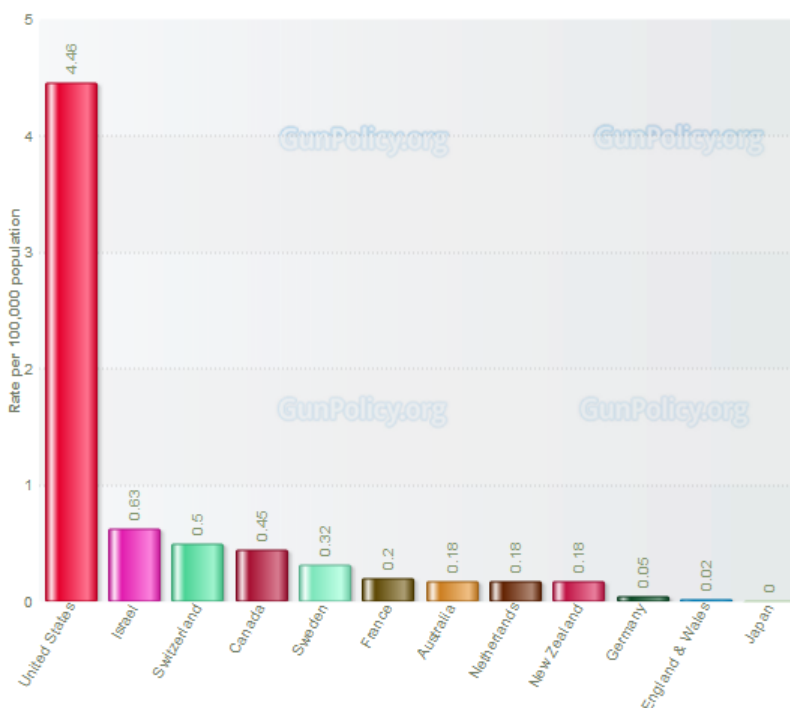
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Compare the United States

Rate of Gun Homicide per 100,000 People



The Australian definition of a “mass shooting” in these studies was five or more victims shot dead, not including the perpetrator. Then in May 2018, a farmer in Western Australia shot dead six of his family members before killing himself. Sadly, the country’s twenty-two year record has been broken.

The impact went beyond gun homicides. In Australia, fully 77% of gun deaths are suicides. One study found that the country’s gun buybacks also led to a drop in gun suicide rates of almost 80%.¹⁸ These authors estimated

18. Andrew Leigh & Christine Neill, *Do Gun Buybacks Save Lives? Evidence from Panel Data*, 12

that since 1996, Australia was likely to have saved itself 200 deaths by gunshot, and \$500 million (AUD) in costs each year.¹⁹

There's still debate about findings like these. One study by two Australian gun lobby researchers found the gun buyback and legislative changes had no influence on firearm homicide.²⁰ More recently a twenty year study in the *Journal of the American Medical Association* concluded that Australia's ban on rapid-fire firearms was associated with reductions in mass shootings and total firearm deaths, but it wasn't certain that the reduction was due to the gun law reforms.²¹ Soon after, statisticians calculated that the odds against the cessation of mass shootings being a coincidence were 200,000 to 1. Based on the rate of such events in Australia during the preceding two decades, they estimated that if the gun laws hadn't been tightened, another sixteen mass shootings might have occurred in the two decades which followed.²²

Although today's politicians and journalists almost always cite that one simple contrast—eleven mass shootings in the decade before gun law reform, and zero mass shootings in the two decades after—no one suggests that Australia's gun problems are over. Granted, a million firearms were destroyed. Yet in the two decades that followed the massacre in Tasmania, Australian arms dealers imported and sold more than a million new firearms.²³

AM. L. ECON. REV. 509, 509-512 (2010).

19. *Id.* at 552. The author's get the \$500 AUD figure by taking the standard figure in the literature of \$2.5 million as the estimate of a value of one life, and multiplying it by lives saved. Since firearm violence in the United States has notably effected young people, the authors note this may be a conservative estimate if society is willing to pay more to save younger lives. *Id.*

20. Jeanine Baker & Samara McPhedran, *Did the Australian Firearms Legislation of 1996 Make a Difference?*, 47 BRIT. J. CRIMINOLOGY 455 (2007).

21. Simon Chapman et al., *Association Between Gun Law Reforms and Intentional Firearms Deaths in Australia, 1979-2013*, 316 J. AM. MED. ASS'N 291 (2016), <https://jamanetwork.com/journals/jama/fullarticle/2530362>.

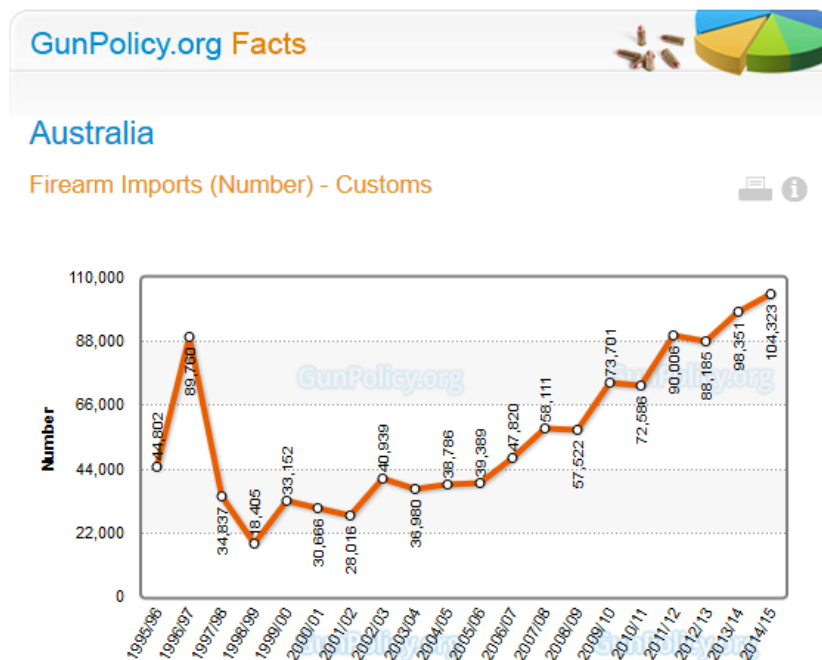
22. Simon Chapman et al., *Fatal Firearm Incident Before and After Australia's 1996 Firearms Agreement Banning Semiautomatic Rifles*, 169 ANNALS INTERNAL MED. 62 (2018).

23. Phillip Alpers, *Firearm Imports, Australia: Non-air modern firearms for civilian possession, 1995 to 2015 (Customs)*, SYDNEY SCHOOL OF PUBLIC HEALTH (Apr. 28, 2016), <http://www.gunpolicy.org/documents/5344-australia-firearm-imports-1995-2012-customs>.

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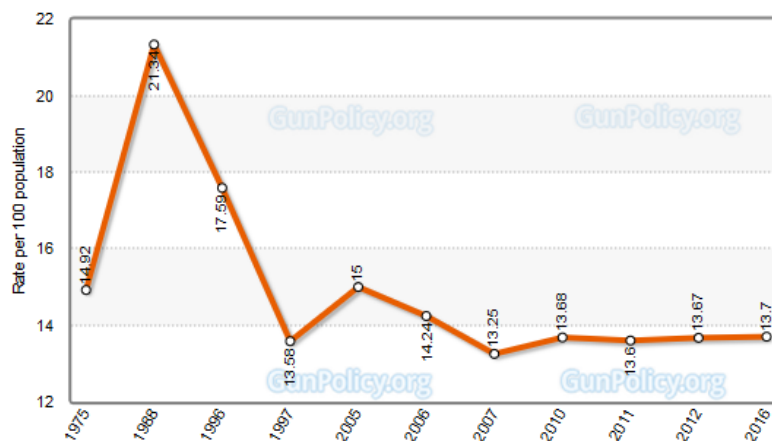


When gun owners were forced to sell their banned semi-automatic rifles and shotguns to the government, many used the cash to buy a replacement single-shot firearm. The spike on the left shows a large increase in gun dealer imports. Then the domestic arms trade crashed. Gradually, sales picked up again. By mid-2015, Australians once again owned as many guns as they had before Port Arthur. But in the same twenty years, Australia's population increased by nearly a quarter. In that period the rate of civilian firearm possession per 100 population remained almost static, so Australians still own 22% fewer firearms per capita than they did before the massacre.²⁴

24. Phillip Alpers, Amélie Rossetti, & Mike Picard, *Australia: Rate of Civilian Firearm Possession per 100 Population*, SYDNEY SCHOOL OF PUBLIC HEALTH (Jan. 17, 2019), https://www.gunpolicy.org/firearms/compareyears/10/rate_of_civilian_firearm_possession.

Australia

Rate of Civilian Firearm Possession per 100 Population



And here's a surprise. According to all the polls that asked the question, in the past thirty years the proportion of Australian households with one or more firearms fell by 75%.²⁵

25. Phillip Alpers, Amélie Rossetti, & Mike Picard, *Australia: Proportion of Households with Firearms*, SYDNEY SCHOOL OF PUBLIC HEALTH (Jan. 17, 2019), https://www.gunpolicy.org/firearms/compareyears/10/proportion_of_households_with_firearms.

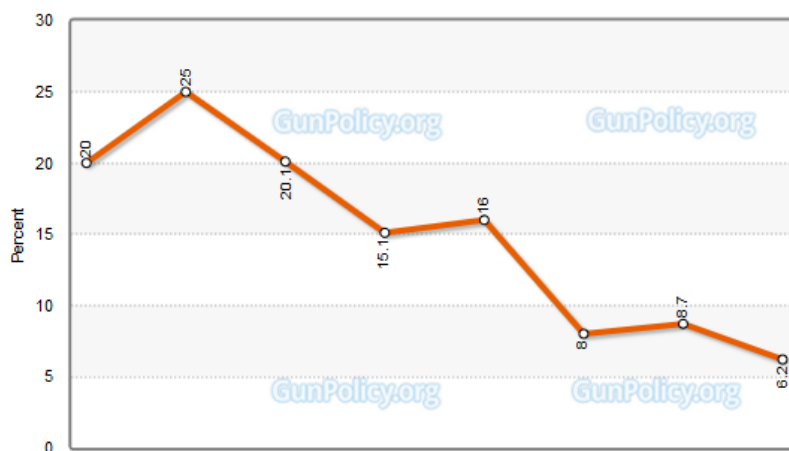
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Australia

Proportion of Households with Firearms

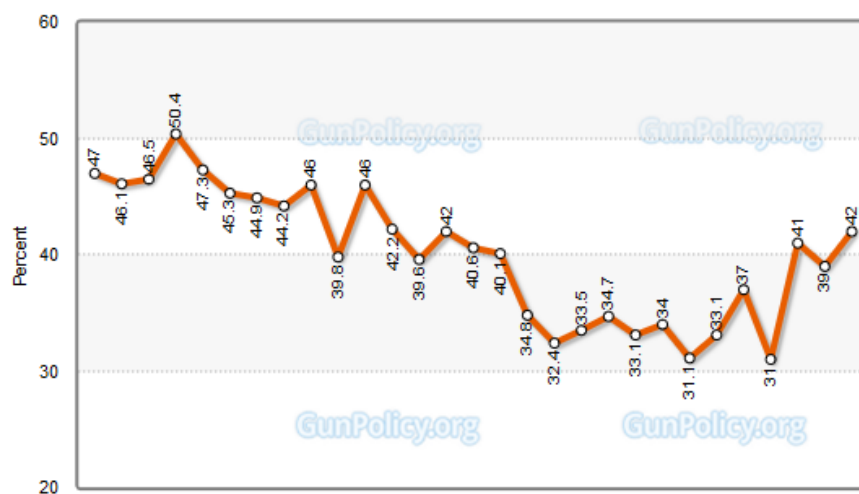


How can this be? It's because the people who bought more firearms were the same people who already had firearms. Those who own guns are buying more, while those who own no guns are becoming more numerous. This trend is international. Americans also report a steady decline in household gun ownership over the past thirty to forty years.²⁶

26. Philip Alpers, Amélie Rossetti, & Mike Picard, *United States: Proportion of Households with Firearms, 1973-2017*, SYDNEY SCHOOL OF PUBLIC HEALTH (Jan. 17, 2019), <https://www.gunpolicy.org/firearms/region/united-states>.

United States

Proportion of Households with Firearms



And that trend is even more pronounced in some Pacific Island nations. Just to the north of Australia in Papua New Guinea, frequent violent disputes once settled with bows and arrows are now often fought with assault rifles. Because of this, a broad consensus has emerged in our region. Destroying firearms can lead to fewer gun deaths. Amid overwhelming public support, more guns were destroyed in the Solomon Islands than the country even knew it had. By law, this is now a gun-free nation.²⁷ Timor-Leste did much the same, and those two countries are not alone. In three-quarters of the nations in our region, police patrol unarmed.²⁸ That includes my home country, New Zealand. Five countries

27. Philip Alpers, *A Disarming Lesson from the Pacific*, ASIA & THE PACIFIC POLICY SOCIETY (Jan. 29, 2016), <https://www.policyforum.net/a-disarming-lesson-from-the-pacific/>.

28. *Routine Arming of Police*, GUNPOLICY.ORG, https://www.gunpolicy.org/firearms/compare/128/police_use_of_firearms/10,221,64,95,236,114,123,132,140,143,155,164,184,188,197 (last visited June 7, 2019).

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and territories ban private possession of firearms; eleven of twenty Pacific countries and territories have no military and the Pacific has the world's highest per-capita rate of firearm destruction. Remarkably, what I'm calling the 'Pacific consensus for disarmament' emerged without any coordination. The region almost unconsciously forged a new way— island nations have both resolved in law and been actively encouraged to disarm the neighbourhood.²⁹ Of course, this cannot work for everyone. The Pacific islands haven't seen a major local conflict since the nine-year Bougainville war, the region is not infested with AK-47s or M-16s, the world's major illicit drug and arms trafficking routes bypass Oceania, and gang violence is not endemic. But we have reversed a popular American slogan. For the time being at least, our regional bumper sticker reads: "An unarmed society is a polite society."

It's sad to remember that in a famous issue of Time magazine ('The Gun in America', 1968) Americans were already saying many of the things which have brought you here today.³⁰ Half a century later in 2018, Time ran another cover with much the same caption and many of the same conclusions.³¹ So how naïve were we foreigners to imagine that Columbine High might be your national tipping point? Or Virginia Tech, or Sandy Hook, Orlando, Stoneman Douglas, Pittsburgh.

But Americans have already invented, tested, and proved most of the solutions needed to control this epidemic. Americans have deployed a holistic array of evidence-based public health measures to dramatically reverse the toll of death and injury by automobile. The world followed suit, and we'll always be grateful for your example. That took road safety devices, better design, traffic calming — but also the three pillars of automobile control:

- The Person: License all drivers
- The Object: Register all vehicles
- The 'Right': Defined in legislation as a conditional privilege.

29. Philip Alpers, *Papua New Guinea: Small Numbers, Big Fuss, Real Results in* INCONSPICUOUS DISARMAMENT: THE POLITICS OF DESTROYING SURPLUS SMALL ARMS AND AMMUNITION 151 (Aaron Karp ed., 2010).

30. Roy Lichtenstein, *The Gun Under Fire*, TIME, Jun. 21, 1968, at 21.

31. *Guns in America*, TIME, Nov. 5, 2018.

Licensing and registration of vehicles did not lead to mass confiscation. Abuse the privilege of motorised mobility and you lose your licence, yet cars remain unchanged as symbols of masculinity, power and freedom. Public safety campaigns from tobacco harm reduction to HIV/AIDS—not to mention smallpox, malaria, Ebola—saved countless millions of lives. In each case America's public health and legal communities overcame decades of denial from cashed-up self-interest groups, and the world followed your example. With HIV/AIDS, you even set aside religious mythology just as potent as the 'God-given' right to bear arms.³²

But is licensing gun owners and registering their weapons just a bridge too far? Not for Franklin Roosevelt. The Saint Valentine's Day Massacre prompted the National Firearms Act of 1934 to license all owners of machine guns, silencers, sawn-off shotguns and rifles, and to register their weapons.³³ Eighty-four years later the NFA remains Federal law, and machine guns and sawn-off long guns are still the weapons least used in armed violence. States like Hawaii, Connecticut, and Massachusetts have also shown that firearm licensing and registration can help to curb gun violence.

But is it too big a job? The entire European Community registers every cow. India has a population of 1.4 billion, yet 80% of households in India register the LPG bottles they rely on for cooking. We know how to do these things.

I don't suggest for a moment that you can just repeat what we've done. Australia, Brazil, Argentina all mounted massive gun bans and buybacks. The United Kingdom first prohibited, and then purchased and destroyed almost every private handgun.³⁴ That's confiscation of private property under threat of jail time, and it's not the American way. For the United States to move as definitively as Australia, Brazil, Argentina or Britain, you'd also have to redesign your government. Have you thought of that lately?

32. See generally DAVID FRANCE, *HOW TO SURVIVE A PLAGUE: THE INSIDE STORY OF HOW CITIZENS AND SCIENTISTS TAMED AIDS* (2016).

33. National Firearms Act, Pub. L. No. 73-474, 48 Stat. 1236 (1934) (Codified as amended at scattered sections of I.R.C. (2017)).

34. Michael J. North, *Gun Control in Great Britain after the Dunblane Shootings*, in *REDUCING GUN VIOLENCE IN AMERICA: INFORMING POLICY WITH EVIDENCE AND ANALYSIS* 185 (Daniel W. Webster & Jon S. Vernick, eds., 2013).

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Finally, America is home to 5% of the world's population, and yet owns 50% of the world's guns.³⁵ But you've now heard the heretical truth: the Second Amendment is just an amendment. Americans are free to introduce, or to repeal a constitutional amendment much as you did to expand suffrage to all citizens,³⁶ to end slavery,³⁷ and to introduce and to repeal Prohibition.³⁸ You've heard today that this prospect seems unlikely. You've also heard that those whom you consider to be your academic and legal heroes include those who get back up and try again. Given the frequency and scale of human rights violations in America with no turning point in sight, such a step to curb armed violence in America should at least not remain unattempted. And surely it must never be considered unmentionable.

I'd be stunned if it happened in my lifetime, but I am confident that our children or grandchildren will see the day.

35. AARON KARP, ESTIMATING GLOBAL CIVILIAN-HELD FIREARMS NUMBERS 4 (2018), <http://www.smallarmssurvey.org/fileadmin/docs/T-Briefing-Papers/SAS-BP-Civilian-Firearms-Numbers.pdf>.

36. U.S. CONST. amend XIX.

37. U.S. CONST. amend XIII.

38. U.S. CONST. amend XVIII; U.S. CONST. amend XXI.